

ELLEN M. MAHAN  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

DAVID L. WEIGERT (DW 8862)  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
(202) 514-0133

CHRISTOPHER J. CHRISTIE  
United States Attorney  
District of New Jersey

SUSAN J. STEELE (SJS 7042)  
Assistant U.S. Attorney  
Chief, Civil Division  
U.S. Attorney's Office  
970 Broad Street, Suite 700  
Newark, NJ 07101  
(973) 645-2920

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**NACIREMA ENVIRONMENTAL SERVICES  
COMPANY, INC.,**

**Defendant.**

**Civil Action No.**

**COMPLAINT**

Plaintiff United States of America ("United States"), by authority of the Attorney General, through the undersigned attorneys, at the request of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

### **NATURE OF THE ACTION**

1. This is a civil action against Defendant Nacirema Environmental Services Company, Inc. ("Nacirema"), seeking civil penalties and injunctive relief, pursuant to the Clean Air Act ("Act"), 42 U.S.C. §§ 7401-7671q, and the National Emission Standard for Hazardous Air Pollutants for asbestos ("Asbestos NESHAP"), 40 C.F.R. Part 61, Subpart M, for failure to provide notice of intent to demolish at least 18 facilities in New Jersey and New York, for failure to comply with an EPA request for information, and for failure to comply with an administrative Compliance Order requiring submission of the same information.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, 1355, and over the parties.

3. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b)-(c), and 28 U.S.C. § 1391(b), venue is proper in the United States District Court for the District of New Jersey because Nacirema is incorporated in and does business in the District of New Jersey.

### **AUTHORITY AND NOTICE**

4. Authority to bring this action is vested in the United States Department of Justice, pursuant to Section 305 of the Act, 42 U.S.C. § 7605, and pursuant to 28 U.S.C. §§ 516, 519.

5. Notice of commencement of this action has been given to the New Jersey Department of Environmental Protection ("NJDEP") and the New York State Department of Environmental Conservation ("NYDEC"), pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b).

### **THE DEFENDANT**

6. Defendant Nacirema is incorporated under the laws of the State of New Jersey and is in the business of conducting wrecking and demolition work.

7. Defendant Nacirema is a “person” as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

### **STATUTORY AND REGULATORY BACKGROUND**

8. The NESHAPs are promulgated by EPA pursuant to Sections 101, 112, 114, 116 and 301 of the CAA, 42 U.S.C. §§ 7401, 7412, 7414, 7416 and 7601, and prescribe emission standards for pollutants determined by Congress and EPA to be hazardous. Congress has listed asbestos as a hazardous air pollutant in Section 112(b)(1) of the CAA, 42 U.S.C. § 7412(b)(1). EPA has designated asbestos as a hazardous air pollutant in 40 C.F.R. § 61.01(a).

9. Asbestos is capable of causing life-threatening and debilitating illness in humans if inhaled.

10. The Asbestos NESHAP, 40 C.F.R. Part 61, Subpart M, includes regulatory requirements governing the emission, handling, and disposal of asbestos during demolition work at asbestos-containing facilities.

11. The Asbestos NESHAP contains inspection and notification requirements for demolition activities, including demolition activities at facilities where no asbestos is present.

12. A “facility” as defined in 40 C.F.R. § 61.141 means “any institutional, commercial, public, industrial, or residential structure, installation, or building. . . .”

13. The term “installation” includes “any group of buildings or structures at a single demolition or renovation site that is under the control of the same owner or operator.” *Id.*

14. Each owner or operator of a demolition activity is required to thoroughly inspect the facility or part of the facility where the demolition operation will occur for the presence of asbestos, in order to determine which requirements apply to the owner or operator of the demolition activity. 40 C.F.R. § 61.145(a).

15. The notification requirements of 40 C.F.R. §§ 61.145(b)(1), (2), (3)(i) and (iv), and (4)(i) through (vii) and (4)(ix) and (xvi), apply to each owner or operator of a demolition activity, even if there is no asbestos in the facility being demolished. 40 C.F.R. § 61.145(a)(2).

16. Each owner or operator of a demolition activity must provide EPA with written notification of the intent to demolish a facility. 40 C.F.R. § 61.145(b). Pursuant to 40 C.F.R. § 61.145(b)(3)(i), such notice must be postmarked at least 10 working days before the date on which operations are to commence. Section 61.145(b)(4) specifies the information that must be included in each such notice.

17. Section 114 of the Act, 42 U.S.C. § 7414, authorizes the Administrator to require any person, who the Administrator believes may have relevant information or who is subject to the requirements of the Act, to establish and maintain records, make reports, and provide such other information as the Administrator may reasonably require for the purpose of determining whether any person is in violation of any emission standard under Section 112 of the Act, 42 U.S.C. § 7412, or of carrying out any provision of the Act.

#### GENERAL ALLEGATIONS

18. Between and including the years 2002 and 2005, Nacirema demolished numerous “facilities” located in New Jersey and New York (“Facilities”), as defined in 40 C.F.R. § 61.141 of the Asbestos NESHAP, including without limitation:

<u>No.</u>	<u>Year(s) of Demolition</u>	<u>Facility Demolished (name &amp; address)</u>
1	2002	Maher Terminal Port Newark, NJ
2	2002	Ashley Remi 11th & Clinton Streets Hoboken, NJ 07030

3	2002	Transcontinental Steel 7212 Kennedy Blvd. West New York, NJ 07093
4	2002-2003	MTA/LIRR East Side Access Superior Reed Buildings A, B and C Queens, NY
5	2003	Eckerd Site for Early Childhood Center #44 Elizabeth School District 288 North Broad Street Elizabeth, NJ
6	2003	Morecraft warehouse Duncan Ave. Jersey City, NJ 07305
7	2003	Home Depot (Kajima) 2171 Forest Avenue Staten Island, NY
8	2003	Nova Development 122 Newark Street Newark, NJ
9	2003	South Beach Boardwalk Staten, Island, NY
10	2003-2004	Beach Point Club 900 Rushmore Ave. Mamaroneck, NY 10543-4599
11	2004	State of New Jersey Columbus School Trenton, NJ
12	2004	Nova Development Prospect Avenue East Orange, NJ
13	2004	Edison Properties 30 Bank Street Newark, NJ

14	2004	Clara Mass Hospital Parking Garage 1 Clara Mass Drive Bellville, NJ
15	2004-2005	Former Palace Play Building 210-226 Cookman Ave. & 201 Lake Ave. Asbury Park NJ 07712
16	2004-2005	Raritan Toll Plaza Garden State Parkway Sayreville, NJ
17	2005	Outerbridge Crossing Toll Plaza Staten Island, NY
18	2005	Union Toll Plaza Garden State Parkway Union, NJ

19. At all relevant times, Nacirema was an “operator of a demolition activity,” as defined in the Asbestos NESHAP, 40 C.F.R. § 61.141, at each of the Facilities.

20. Pursuant to 40 C.F.R. § 61.145(a)(1), the notification requirements of the Asbestos NESHAP demolition standard, set forth at 40 C.F.R. § 61.145(b), applied to Nacirema as an operator of a demolition activity.

21. Pursuant to 40 C.F.R. § 61.145(b)(1), Nacirema was required to provide the Administrator with written notice of its intent to demolish each Facility.

22. On March 8, 2004, the Administrator, acting through his lawful delegate, the Director of the Division of Enforcement and Compliance Assistance, Region 2, EPA, issued a request for information to Nacirema, pursuant to the Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1), Reference No. CAA-02-2004-1455 (“Information Request”).

23. The Information Request required Nacirema to submit to EPA information regarding any demolition project and any asbestos-related renovation project conducted by

Nacirema or any of its affiliates or subcontractors during the years 2002, 2003 and 2004 in the states of New York and New Jersey, including the following:

- a. the name and address of each demolition and/or renovation facility;
- b. the name and address of the owner and any of Nacirema's affiliates or subcontractors for each demolition and/or renovation project, and copies of any contracts entered into by Nacirema with each such owner and/or subcontractor;
- c. the start and end dates of each project;
- d. a statement of whether an inspection of the facility for the presence of friable and nonfriable asbestos-containing material ("ACM") was conducted prior to each demolition and/or renovation project, and copies of any reports generated as the result of such inspection, any laboratory analytical reports and sample results;
- e. a copy of each notification regarding demolition submitted to EPA or any state or city agency;
- f. a copy of each notification regarding any asbestos related renovation submitted to EPA or any state or city agency; and
- g. a statement of whether an on-site representative trained in the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(8), and in the means of complying with the regulations, was present at the facility at all times during the removal of ACM, and if such an on-site representative was present, a statement of the precise dates and times when the representative was on-site, and copies of all relevant records documenting the representative's presence and his/her credentials.

24. The Information Request, addressed to Nacirema Vice President, Anthony Novello, states that "in order to be complete, [Nacirema's response] must be signed by you [Mr. Novello] or another officer of the referenced company acknowledging that the signatory has read the letter."

25. The Information Request required, inter alia, that Nacirema submit to EPA its response within 30 calendar days after Nacirema received the Information Request.

26. Nacirema received the Information Request on March 19, 2004. Therefore, Nacirema was required to submit to EPA its response to the Information Request on or before April 19, 2004.

27. Nacirema did not submit to EPA a response to the Information Request on or before April 19, 2004.

28. On May 12, 2004, the Administrator, acting through his lawful delegate, the Director of the Division of Enforcement and Compliance Assistance, Region 2, EPA, issued a Compliance Order (No. CAA-02-2004-1026), pursuant to Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3) ("Compliance Order"), to Nacirema.

29. The Compliance Order contained findings of fact, including, inter alia, that Nacirema was in violation of Section 114 of the Act, 42 U.S.C. § 7414, because as of the date of the Compliance Order (May 12, 2004), Nacirema still had not submitted its response to the Information Request.

30. Based on such findings of fact, inter alia, the Compliance Order ordered Nacirema to comply with the Information Request and to submit its response to the Information Request no later than 10 working days after the effective date of the Compliance Order.

31. The Compliance Order provides that its effective date was five days after its receipt by Nacirema. Nacirema received the Compliance Order on May 15, 2004. Therefore, the effective date of the Compliance Order was May 24, 2004, and the compliance deadline established thereby was June 7, 2004.

32. Nacirema failed to meet the June 7, 2004 deadline for complying with the Compliance Order.



33. Nacirema did not submit any response to the Information Request or to the Compliance Order until June 30, 2004.

34. On June 30, 2004, Nacirema submitted to EPA a table entitled "Compliance Order (CAA-02-2004-1026): Nacirema Environmental Services Company Inc jobs from 2002 thru 2004" ("Initial Response").

35. Nacirema submitted its Initial Response 72 days after the deadline set forth in the Information Request (April 19, 2004) and 23 days after the deadline set forth in the Compliance Order (June 7, 2004).

36. Nacirema's untimely Initial Response was also incomplete in several respects. The Initial Response:

- a. did not include the full name and address of each demolition facility;
- b. did not include the full name and address of the owner of each demolition facility;
- c. did not identify which names and addresses it provided were those of "Owner[s]" of demolished facilities or of "General Contractor[s]" for the demolition of those facilities;
- d. did not include the full name and address of any of Nacirema's affiliates or subcontractors for any demolition project;
- e. did not include copies of any contracts entered into by Nacirema with each of the above-referenced owners and/or subcontractors;
- f. did not include start or ending dates for any demolition project;
- g. did not include copies of any reports generated as the result of any inspection of any demolition facility for the presence of friable or nonfriable ACM;

h. did not include copies of any laboratory analytical reports or sampling results generated as the result of an inspection of any demolition facility for the presence of friable or nonfriable ACM;

i. did not include a copy of any notification to EPA, or any state or city agency, regarding any of Nacirema's demolition projects;

j. did not state whether an on-site representative trained in the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(8) ("On-Site Representative"), and in the means of complying with the regulations, was present at any facility demolished by Nacirema at all times during the removal of any ACM;

k. if such an On-Site Representative was present, did not include the precise dates and times when the representative was on-site, and did not include copies of any records documenting such On-Site Representative's presence or credentials; and

l. was not signed by Nacirema Vice President Anthony Novello, or any other officer of the company, and contained no acknowledgment that any signatory had read the response.

37. Thereafter, the United States repeatedly requested that Nacirema supplement its Initial Response.

38. In late July 2005, EPA received from Nacirema a response ("Supplemental Response") to the United States' June 13, 2005 letter. The Supplemental Response was received more than 455 days after the deadline set forth in the Information Request (April 19, 2004) and more than 406 days after the deadline set forth in the Compliance Order (June 7, 2004).

39. Nacirema's Supplemental Response included hundreds of pages of information and historical documentation responsive to EPA's Information Request and ACO which the company had not submitted previously.

### **FIRST CLAIM FOR RELIEF**

40. The allegations contained in Paragraphs 1 through 39 are incorporated by reference as if set forth here in full.

41. The Asbestos NESHAP at 40 C.F.R. § 61.145(b)(3)(i) requires that each notice submitted pursuant to 40 C.F.R. § 61.145(b)(1) be postmarked or delivered at least 10 working days before demolition begins.

42. EPA never received advanced notice from Nacirema of the demolition of any of the Facilities.

43. Each failure by Nacirema to timely submit to the Administrator a notice of demolition of a Facility constitutes a separate violation of 40 C.F.R. § 61.145(b)(3)(i) and, therefore, of Section 112 of the Act, 42 U.S.C. § 7412.

44. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 42 C.F.R. Part 19, Nacirema is subject to civil penalties of up to \$27,500 per day per violation of the Act, occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 per day per violation of the Act occurring after March 15, 2004.

45. Unless enjoined by order of this Court, Nacirema will continue to violate the notification requirements of the Asbestos NESHAP for demolition activity, 40 C.F.R. § 61.145(b).

### **SECOND CLAIM FOR RELIEF**

46. The allegations contained in Paragraphs 1 through 45 are incorporated by reference as if set forth here in full.

47. Nacirema's Initial Response constituted an untimely and incomplete response to EPA's Information Request.

48. EPA did not receive from Nacirema a supplement or amendment to its Initial Response until late July 2005, when EPA received the company's Supplemental Response.

49. Nacirema's Supplemental Response constituted an untimely response to EPA's Information Request.

50. Each day that Nacirema failed to submit to EPA a complete and accurate response to the Information Request constitutes a violation of Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1).

51. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 42 C.F.R. Part 19, Nacirema is subject to civil penalties of up to \$27,500 per day per violation of the Act, occurring between January 30, 1997 and March 15, 2004, and \$32,500 per day per violation of the Act occurring after March 15, 2004.

### **THIRD CLAIM FOR RELIEF**

52. The allegations contained in Paragraphs 1 through 51 are incorporated by reference as if set forth here in full.

53. Nacirema's Initial Response constituted an untimely and incomplete response to EPA's Compliance Order.

54. EPA did not receive from Nacirema a supplement or amendment to its Initial Response until late July 2005, when EPA received the company's Supplemental Response.

55. Nacirema's Supplemental Response constituted an untimely response to EPA's Compliance Order.

56. Each day that Nacirema failed to submit to EPA a complete and accurate response to the Compliance Order constitutes a violation of Section 113(a)(4) of the Act, 42 U.S.C. § 7413(a)(4).

57. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 42 C.F.R. Part 19, Nacirema is subject to civil penalties of up to \$27,500 per day per violation of the Act, occurring between January 30, 1997 and March 15, 2004, and \$32,500 per day per violation of the Act occurring after March 15, 2004.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court enter judgment in its favor and that the Court:

(a) Assess civil penalties of up to \$27,500 per day per violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 per day per violation occurring after March 15, 2004, for each of Nacirema's violations of Sections 112, 113 and 114 of the Act, 42 U.S.C. §§ 7412, 7413, 7414, and the Asbestos NESHAP, 40 C.F.R. Part 61, Subpart M;

(b) Permanently enjoin Nacirema from further violations of Sections 112, 113 and 114 of the Act, 42 U.S.C. §§ 7412, 7413, 7414, and the Asbestos NESHAP, 40 C.F.R. Part 61, Subpart M;

(c) Award the United States its costs and disbursements incurred in connection with this action; and

(d) Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Date: 3/19/07

\_\_\_\_\_  
ELLEN M. MAHAN  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice

Date: 3/19/07

\_\_\_\_\_  
DAVID L. WEIGERT (DW 8862)  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
(202) 514-0133

CHRISTOPHER J. CHRISTIE  
United States Attorney  
District of New Jersey

SUSAN J. STEELE (SJS 7042)  
Assistant U.S. Attorney  
Chief, Civil Division  
U.S. Attorney's Office  
970 Broad Street, Suite 700  
Newark, NJ 07101  
(973) 645-2920

OF COUNSEL:

JOHN F. DOLINAR  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency, Region II  
290 Broadway  
New York, NY 10007-1866  
(212) 637-3204